1949

File No. O.I.P.C./49

Legal Department

A BRANCH

Subject:— Opinions Under the Indian Penal Code

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O.I.P.C./49

File No.

49-A

C O N T E N T S.

Legal Department File No. I.P.C. /49

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A/
T4/6

PTR.
6/8/. 5a.

1. Office of the R.L.A.

The question referred to R.L.A. is whether the book called "Kokashastra" is obscene.

2. In the case Shriram Sakseria V. The Emperor (1941, Calcutta 582) Akram J. observed :" For the purpose of deciding whether the picture is obscene or not, we have to consider x to a great extent the surrounding circumstances, the posture, the suggestive elements in the picture, the person in whose hands it is likely to fall, etc., and no hard and fast rule can, therefore, be laid down for the determination of the matter." The book in the present case contains 84 nude pictures of various poses of intercourse not only between man and woman but even between woman and beast. In this connection reference is invited to some pictures Nos. 13, 45 and 82 . These pictures of various poses of sexual intercourse are prima calculated to produce a pernicious effect in depraying or debauching the minds of young persons into whose hands the book may fall. In considering these pictures we may also have to consider the way in which the whole question about love affairs has been dealt with. Throughout an attempt has been made by the author of the book to excite thoughts of the most impure and libidinous character; that is particularly apparent from the stories given on pages 29 onwards. It appears, therefore, that the book is obscene. Sales, distribution and exhibition of this book would be punishable under section 292 of the Indian Penal Code.

3. Section 3 of the Press and Registration of Books Act requires that every book or paper printed within the Indian Dominion should have printed legibly on it the name of the printer and the place of printing and, if the book or paper is published, the name of the publisher and the place of publication. No such particulars have been printed on the book in the present case. Action against the printer and publisher would also be possible under section 12 of the Press and Registration of Books Act.

Sd/.....

Remembrancer of Legal Affairs.

DYD.5/6/50.

Dressing of Ganpatis in modern fashion.

Indian Penal Code, 1860.

Sec. 295A.

Section 295A, Indian Penal Code, is the only relevant provisions, but no action can be taken out under that provision unless it can be proved that the cladding of Ganpati images in modern fashions could be proved to have been done with the deliberate and malicious intention of outraging the feelings of Hindus, which can neither be found nor inferred in such cases.

Sd/.....27/1.

Remembrancer of Legal Affairs.

U.R. to H.D.(Poll.) No.1052, dated the 28th Jan. 1949.

DTR.

S/C.

Se.

The question raised for the B.L.A.'s consideration is whether the magazine entitled "Kaliyuga" which contains six nude pictures of woman is obscene.

2. Nude pictures which exhibit a work of art will not fall under section 292. A picture of a woman in the nude is not ~~per se~~ obscene. For the purpose of deciding whether the picture is obscene or not, one has to consider to a great extent the surrounding circumstances, the pose, the posture, the suggestive element in the picture, the person in whose hands it is likely to fall, etc. But pictures of a bawdy character, if filthy and disgusting, will be considered obscene (see Ratanlal's Law of Crimes, p.647). The test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall. If the work is one which would certainly suggest to the minds of the young of either sex, or even to persons of more advanced years, thoughts of most impure and libidinous character, its publication is an offence, though the accused has in view an ulterior object which is innocent or even laudable. Anything calculated to inflame the passions is obscene. Anything distinctly calculated to incite a reader to indulge in acts of indecency or immorality is obscene, e.g. a book containing a description of defective sexual enjoyment with advice for heightening and prolonging such enjoyment in the case of normal persons (see ibid p.646P. the nude pictures included in this magazine do not exhibit any work of art; nor do they intend to illustrate any scientific treatment of the subject. The first picture on the front page of the magazine is clearly of a libidinous character when judged from its posture, pose and suggestive elements contained in it. No explanation is offered as to why this nude picture is printed on the front page of the magazine. Obviously this is intended to attract the young boys. The subjects dealt with in this magazine are all intended to inflame passions. The article dealing with the origin of kissing, containing illustrative

illustrative pictures, the article dealing with male & female, and also the article dealing with prostitution (which contains two nude pictures) deal with love matters. The article under the heading "Female and Nudity" contains two nude pictures. These pictures are strikingly of a libidinous character as could be gathered from their pose, posture and x suggestive elements. No reason is assigned by the author as to publish these nude picture in connection with this article. The article relating to the marriage of a passionate woman also contains a nude picture which exhibits the charms of a woman. Lastly, the article under the headging " Entanglement in Youth" and the Questions and Answers at the end have a tendency to excite passions. Read as a whole, the magazine and the nude pictures contained therein are obscene inasmuch as the publication has a tendency to deprave and corrupt the young people in whose hands it is likely to fall and the thoughts expressed in this magazine are of an impure and libidinous character. Consequently, the magazine would come within the provisions of section 292 of the Indian Penal Code.

Sd/.....10/5.

Remembrancer of Legal Affairs.

U.R. to H.D.No. 289- Confl, dated 10th May 1949.

DYR.

5/6.

Sc.

Whether unauthorised quarrying and removal of rubble stone etc. from Govt. land would amount to theft.

I.P.C. Sec. 378.

In Queen Empress vs. Shivram 15 Bom. 702 parsons J held that earth, that is soil, and all the component parts of the soil, inclusive of the stones and minerals, when severed from the earth are moveable property capable of being the subject of theft. Whoever therefore severs x such earth from the earth, with the dishonest intention specified in section 378, can be said to commit theft. This view was followed in Suri Venkatappayya Sastri V.Madula Venkanna 27 Mad. 531, where it was held the stones, when carried and carrried away are " things severed from the earth" within the meaning of section 378, explanation 1 of the Indian Penal Code and are " Moveable property" within the meaning of section 22 and as such are capable of being the subject of theft. In the present case also the unauthorised quarrying and removal of rubble, stone, murum etc. from Government land by the Manager of the Hind Construction Co. Ltd., would amount to theft.

Sd/.....20/3.

Remembrancer of Legal Affairs.

U.R. to R.D.No. 3251, dated the 25th March 1949.

DYR.

5/6.

So.

This book purports to be a collection of letters written by a young patriotic husband to his spouse between 1942 and 1944. In all there are 13 letters (some with post scripts) under various captions. The burdenk of these letter is that the woman of India are in bondage and they must raise the banner of revolt against man's tyranny and oppression. The collection of letters is published under the title, "Kranti Puja" which means offering to the spirit of revolution. The writer claims to be devotee of the revolutionary spirit and x according to him the book is his bumble contribution towards the creation of x revolutionary atmosphere.

2. Had the book been concerned only with the explaining the genesis of the traditional sexual morality and with demonstrating that , that morality is unnatural and had that been done in a purely , scientific spirit and in a language befitting a scientific treatise, perhaps no objection could have been taken to the book. I am, however, satisfied- and I have got the book read by three members of this Department, who are also equally satisfied- that it is not only the thesis so much but more so the manner of its presentation which is objectionable and makes the book obscene. Letter Nos. 6 and 12 in particular contain matter and are written in a manner which cannot but excite libidinous thoughts even in a mature mind. Thus, the theme of the 6th letter is that women should not give undue importance to chastity or conjugal fidelity and that lewdness is the rule and such fidelity is an exception among married women. This letter gives the writer's belief that a married woman is likely to relish

sexual intercourse with an outsider more than with her husband. In the 12th letter the writer has depicted what he thinks to be an ideal couple where the wife is permitted openly to have sexual intercourse with whomsoever she likes- in this case with her husband's friend. The description of the behaviour with the firend is written in such colourful language that it is bound to inflame passions. In its main thesis, which seeks to undermine the current sexual morality, and more so in its presentation, the book would appear to be undoubtedly obscene when it is judged by the well established test of obscenity which is whether the matter has a tendency to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall. If, in fact, the work is one which would certainly suggest to the minds of the yound of either sex or even to persons of more advanced years thoughts of most impure and libidinous character, its publication is an offence though the accused may have in view an ulterior object which is innocent or even laudable, as the accused in this case maintains he has. In my opinion, therefore, there is no reason for withdrawing the prosecution.

Sd/.....18/5.

Remembrancer of Legal Affairs.

U.R. to H.D.(Poll)No.309- Confl. dated the 15th May 1949.

DYR.

5/6.

5c.

CONFIDENTIAL.

The record shows that Mr. Paregaonkar was discharged, and the question whether his services should be treated as continuous after reinstatement is still under consideration. One of the grounds fo dischafging him was his continue objectionable and insubordinate behaviour; and that would be treated as misconduct, which is a relative term, and by which we mean wrongconduct or improper conduct. A criminal prosecution or civil proceedings for damages, if commenced by him, would even otherwise be defensible. The qualified privilege regarding statements made in the discharge of a public duty and also of statements made in reply to inquiries by the plaintiff can be successfully pleaded as a defence to an action for defamation, and the second and ninth exceptions to section 499 would be availabl in respect of a prosecution for defamation. In these circumstances it is best to ignore the notice given by Mr. Paregaonkar.

2. It is a matter for Government's consideration whether a subordinate should be allowed to serve a notice threatening a prosecution or a suit against his superior for communications made to him in response to official inquiries on his part relatin to matters of interest to him. In a similar case where a Police Prosecutor had commenced action agains his superior, it was pointed out by the R.L.A. that an open allegation of malice made by a subordinate against his master would in any case be incompatible with the due and faithful discharge of his duty and would, therefore, be incompatible with the relation

of master and servant and would ordinarily call

for disclipinary action.

/1/.....2/0.

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 343 Confl, dated the 3rd June 1949.

I.D.B.I.No. 6966 dated 10-5-49

Attention is invited to B.L.A's slip opinion No. 2545 dated 5-3-49.

3. The Commr. of Labour has pointed out that the first reason stated by B.L.A. in his opinion was not in conformity with Rule 110 of the Bombay Boiler Rules which makes it obligatory on the part of the candidate to produce a testimonial of service for not less than the minimum required period.

Sd/...

DVR.
5/5.
5a.

OFFICE OF [illegible]

Bombay Boiler Rules 1924, Rule 110 R.L.A's opinion No.2545 dated 5th March 1949.

The Remembrancer of Legal Affairs accepts the correction pointed out by the Commissioner of Labour. The second part of his opinion remains unaffected by that corrections.

Sd/.....6/7.

Remembrancer of Legal Affai[illegible]

U.R. to Labour Deptt. No. 7526 of 7/7/49

DYR.

S/6.

Unauthorised quarrying and removal of rubble, stone etc. from Government land -

Indian Penal Code Section 378.

There is no legal objection to Government resorting to a criminal action against such persons but it will not be possible to recover the value of the materials unauthorisedly removed by taking such action; the only course to recover the value would be by filing a suit in the case.

Sd/.....26/5.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 3912, dated the 27th May 1949.

DTP.

5/6.

Se.

Hallis in his book "Law and Obscenity" has pointed out that the courts have refrained from attempting any definition of obscenity, and has observed that even the International Conference on the Suppression of the Circulation and Traffic in Obscene Publications, which was held at Geneva, readily admitted that the term obscenity was not capable of definition and proceeded to discuss their problems without such a definition. The laws of other countries available in the English language on the subject were, however, looked up. It does not appear that the term "Obscene" or "Obscenity" has been defined anywhere; neither does it appear that any court has interpreted the term more stringently than Cockburn C.J. in R.V. Hicklin (1868) L.R. 2Q B.360.

Sd/.....23/7.

Remembrancer of Legal Affairs.

D.R. to H.D.No. 464.Confl. dated the 23rd July 1949. (P-44)

MR.

S/S.

No.

Prosecution for false complaint.

Sec.182 of the Indian Penal Code.

Since it was not competent to the Prant Officer to issue a summons for the attendance of the applicant, a ~~summary~~ prosecution for the offence under section 174 of the Indian Penal Code would not be feasible. It would, however, be feasible to prosecute the applicant for the offence under section 182 of the Indian Penal Code. Both he and the pleader can also be held liable for the offence of defamation.

Sd/.....13/9.

Remembrancer of Legal Affairs.

U.O. to Revenue Department No. 10383, dated the 14th September 1949.

The facts briefly seem to be as follows. Ashok Tiwari eloped with Indirabai wife of the complainant M Surendra Shah. She is described in the complaint as about ~~xx~~ 17 or 18 years of age. The elopement took place sometime in July 1967, i.e. two years ago. The couple have settled at Ujjain where the accused Ashok Tiwari is employed. It has also now been reported that Indirabai has given birht to a son. The complainant allege that ~~x~~ Ashok Tiwari and Indirabai took with them certain articles almost all of which are personal belonging of a woman, such as, gold bangles, earrings, sarees, blouses etc. There is also a statement that the accused had removed other articles a list of which is, however, not given . The accused was arrested and discharged in Madhya Bharat, because a prima facie case was not received.

2. Upon these facts the question arises whether we should make a requisition to the Madhya Bharat authorities for surrendering the accused Ashok Tiwari and Indirabai. As stated before in ~~xxxx~~ my opinion No.3135 dated 24th March 1969, the offence under section 366 cannot be established in th case. It is obvious that the woman has eloped of her own accord and having regard to her age and her consent, no case can be made out for the offence of kidnapping and abduction under section 366. For that same reason it may be difficult to establish the offence under section 498. Although the fact that a woman accompanies the accused of her own free will does not diminish the criminality of the act under section 498, some influence emanating from the accused or some blandishment or coaxing must be established. Of that there is no evidence in the case, and the woman will most certainly not support the prosecution, since she has now decided to settle with the accused Tiwari and has even got a child by him. It would be very difficult to establish the offence under section 379, for, in all such cases the plea will be taken that

the property belonged to the woman and was her Stree Dhan so that she did not commit any theft in taking the property with her. The only offence which can be undisputably established is that of adultery under section 497.

3. In these circumstances it is a matter for Government's consideration whether we should make a requisition to the Madhya Bharat Government. As I ha e already pointed out in my opinion referred to above, offences under sections 497 and 498 are not extradition offences. If, however, they are included in any treaty with the State concerned, Government can make a requisition in accordance with that treaty.

20/8.

Remembrancer of Legal Affairs.

D.O. to P.S. G. No., 9450, dated the 24th August 1949.

DM. 6/6/.

So.

Prosecution of Centre Inspector Mr.Jankhandi for accepting illegal gratification. I.P.C. Sec.161.

When the gratification was accepted Mr. Jankhandi was a public servant. He may have ceased to be so as a result of the order which was made to operate with retrospective effect. That would not, however, make any ~~diff~~ difference to the orinal act of accepting illegal gratification being a public servant. The proposed prosecution is legally feasible.

Sd/.....29/10.
Remembrancer of Legal Affairs

U.R. to C.P.D./Estt. No. 678-Confl. dated the 31st October 1949.

DYR.

6/6

Se.

Prosecution of M.C.Patel under sections 415 and/or 182 I.P.C.

The element of dishonesty at the initial stage, which is the gist of an offence under section 414 I.P.C. is wanting. Undoubtedly, the engine was released in favour of Mr.Patel because he promised to use it for growing food- crops. There is no evidence that it is not being used for growing food-crops. Moreover, it appears that Mr. Patel has installed an old engine on his well which fact suggests that at the time he applied for the Essentiality Certificate there was no dishonest intention on on his part.

2. As regards section 182 I.P.C. the information given must be proved to false. The original agreement which contained that information is missing. If the present engine is being used for growing food-crops only, it would be difficult to establish that the information given by him is false. In the circumstances prosecution either under section 415 or 182 I.P.C. is not feasible.

Sd/.....6/12.

Remembrancer of Legal Affairs.

U.O. to Agriculture and Forest Department No. 14224 dated the 8th December 1949.

DXR.

G/C.

Sc.